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REPORT No. 60/22
PETITION 514-11
FRIENDLY SETTLEMENT REPORT

LUIS HERNANDO MORERA GARZÓN
COLOMBIA

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I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On April 20, 2011, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “IACHR”) received a petition filed by Nelson de Jesús Ríos Santamaría (hereinafter “the petitioner” or “the petitioner party”) in which he alleged the international responsibility of the Republic of Colombia (hereinafter, “the State” or “the Colombian State”) for the violation of the rights enshrined in articles 4 (right to life), 5 (right to humane treatment) and 8 (fair trial) of the American Convention on Human Rights (hereinafter “the Convention” or “American Convention”) to the detriment of Mr. Luis Hernando Morera Garzón (hereinafter “alleged victim”), due to the lack of investigation and punishment of those responsible for his murder on May 19, 1997, presumably by members of the 27th front of the Revolutionary Armed Forces of Colombia (hereinafter “FARC”).

2. On July 8, 2020, the petitioner informed the Commission of his interest in starting a friendly settlement process in the case. This information was transmitted to the State on June 29, 2020.

3. On December 23, 2020, the State informed the Commission that it was interested in starting a friendly settlement process and requested the good offices of the IACHR.

4. Subsequently, on March 3, 2021, the parties held a meeting in the city of Bogotá and signed a memorandum of understanding, through which they committed to starting a friendly settlement process and working together to develop formulas for a possible agreement.

5. On March 11, 2021, the Commission notified the parties of the start of the friendly settlement procedure, a process in which the parties finally signed a friendly settlement agreement on August 25, 2021. Subsequently, on November 22, 2021, the parties presented a joint report giving an account of the progress made in complying with the agreement and requesting its approval.

6. In this friendly settlement report, as established in Article 49 of the Convention and in Article 40.5 of the Commission's Rules of Procedure, a review of the facts alleged by the petitioners is made and the friendly settlement agreement, signed on August 25, 2021, by the petitioner and representatives of the Colombian State is transcribed. Likewise, the agreement signed between the parties is approved and the publication of this report in the Annual Report of the IACHR to the General Assembly of the Organization of American States is decided.

II. THE FACTS ALLEGED

7. According to the allegations of the petitioner, Mr. Luis Hernando Morera Garzón was allegedly assassinated, presumably by members of the FARC, supposedly for having collaborated with the Army and not having alerted the commanders of the guerrilla organization early.

8. The petitioner stressed that the area in which the alleged victim was allegedly murdered, and where he lived permanently, was a region that was allegedly controlled by this illegal group. According to the petitioner, at the time of the events, the policy followed by the National Government would have involved the creation of a so-called “de-escalation zone” that would have consolidated the rule of illegal groups in the region

¹ Commissioner Carlos Bernal Pulido, a national of Colombia, did not participate in the discussion and decision in accordance with article 17.2.a) of the Rules of Procedure of the IACHR.

and presumably weakened the presence of the public force. Therefore, the petitioner alleged that the death of the victim would have been a consequence of the lack of protection by the State in the framework of the creation of this demilitarized zone.

9. The petitioner party argued that, at the time of the victim's murder, it was allegedly the same inhabitants of the area who had to remove the body, given that the illegal groups presumably did not allow the entry of any kind of state authorities. Consequently, he argued that no type of investigation into the facts had been carried out and that the crime remains unpunished. At the time of filing the petition, the petitioners alleged that they feared for their lives if they filed any type of complaint.

10. Finally, the petitioner stated that, due to the crime perpetrated against Luis Hernando Morera Garzón, the next of kin presumably had to move from their habitual residence to relocate to the city of Villavicencio.

III. FRIENDLY SETTLEMENT

11. On August 25, 2021, the parties signed a friendly settlement agreement, the text of which establishes the following:

FRIENDLY SETTLEMENT AGREEMENT PETITION No. 514-11 - LUIS HERNANDO MORERA GARZON

On August twenty-five (25), 2021, Ana María Ordoñez Puentes, Director of the Directorate of International Legal Defense of the National Agency for Legal Defense of the State, who is duly authorized to act on behalf of and in the name of the Colombian State, hereinafter the "State" or the "Colombian State," and on the other hand, Dr. Luz Marina Barahona Barreto, who acts in her capacity as representative of the victims, hereinafter the "petitioners", who have decided to sign this Friendly Settlement Agreement within the framework of Petition No. 514-11, Luis Hernando Morera Garzón, in progress before the Inter-American Commission on Human Rights.

FIRST SECTION: DEFINITIONS

For the purposes of this agreement, the following terms shall be understood as follows:

IACHR or Inter-American Commission: Inter-American Commission on Human Rights.

Moral damage: Harmful effects of the facts of the case that do not have an economic or patrimonial nature, which are manifested through the pain, affliction, sadness, anguish and anxiety of the victims.

Non-pecuniary damage: Includes both the suffering and afflictions caused to the victims, the impairment of very significant values for people, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or her family.²

State or Colombian State: In accordance with Public International Law, it will be understood that it is the signatory subject of the American Convention on Human Rights, hereinafter "American Convention" or "ACHR".

² I/A Court H.R., Case of Caesar v. Trinidad and Tobago. Merits, Reparations and Costs. Judgment of March 11, 2005. Series C No. 123, para. 125.

Satisfaction measures: Non-pecuniary measures whose purpose is to seek the recovery of the victims of the damage that has been caused to them. Some examples of this type of measure are: public knowledge of the truth and acts of reparation.

Parties: State of Colombia, next of kin of the victim, as well as their representatives.

Acknowledgment of responsibility: Acceptance of the facts and violations of human rights attributed to the State.

Comprehensive reparation: All those measures that objectively and symbolically restore the victim to the state prior to the commission of the damage.

Representative of the victims: Dr. Luz Marina Barahona Barreto.

Friendly Settlement: Alternative dispute resolution mechanism, used for peaceful and consensual settlement before the Inter-American Commission.

Victims: The relatives of Mr. Luis Hernando Morera Garzón.

SECOND SECTION: BACKGROUND

BEFORE THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

1. The Inter-American Commission on Human Rights received an international petition on April 20, 2011, as a result of the assassination of Mr. Luis Hernando Morera Garzón, perpetrated on May 19, 1997, at the hands of members of the 27th Front of the extinct FARC-EP guerrillas.
2. The initial petition indicates that Mr. Luis Hernando Morera Garzón was a peasant who lived in the Municipality of Retorno, Department of Guaviare, an area where the extinct FARC guerrillas were present. Said guerrilla allegedly forced Mr. Morera Garzón to serve as an informant and issue alerts in the event of a military presence in the area. However, considering that he had failed to fulfill his obligation and had given information to the National Army, the FARC guerrillas allegedly decided to assassinate him, and additionally, allegedly appropriated his properties, including a 200-hectare farm, 13 cattle, a motor and a motorcycle.
3. The initial petition notes that, due to these facts, the next of kin of Mr. Morera Garzón would have been forced to move to the Municipality of Villavicencio, Department of Meta.
4. A Memorandum of Understanding for the Negotiation of a Friendly Settlement was signed between the Colombian State and the petitioners on March 3, 2021, which was brought to the attention of the Inter-American Commission on March 4, 2021.
5. In the following months, joint meetings were held between the parties to analyze the reparation measures to be included in the Friendly Settlement Agreement that is signed on this date.

AT THE DOMESTIC LEVEL

An ex officio investigation was carried out by the Office of the Attorney General of the Nation for the homicide of Mr. Luis Hernando Morera Garzón. However, it was suspended in 1997 by

said body since it was not possible to establish the identity of those responsible for the act. Currently, the statute of limitations of said criminal action has elapsed.³

THIRD SECTION: BENEFICIARIES

The Colombian State recognizes the following persons as victims for the purposes of this agreement:

Name	Identity Document	Relationship
Blanca Rosa Garzón de Morera	[...]	Mother
Juan de Jesús Morera Castro (deceased) ⁴	[...]	Father
Emanuel Morera Garzón	[...]	Brother
José Adán Morera Garzón	[...]	Brother
Jorge Isaac Morera Garzón	[...]	Brother
German Antonio Morera Garzón	[...]	Brother
Gloria Morera Garzón	[...]	Sister
Juan Cipriano Morera Garzón	[...]	Brother
Blanca Margoth Morera Garzón	[...]	Sister
Diana Patricia Morera Sánchez ⁵	[...]	Sister

The victims recognized in this Friendly Settlement Agreement will benefit as long as they prove their blood relationship with Mr. Luis Hernando Morera Garzón.

Additionally, the victims who will benefit from this Friendly Settlement Agreement will be those who were alive at the time of the victimizing act.⁶

FOURTH SECTION: ACKNOWLEDGMENT OF RESPONSIBILITY

The Colombian State acknowledges its international responsibility by omission, for the violation of the rights recognized in articles 8 (rights to judicial guarantees) and 25 (right to judicial protection) of the American Convention on Human Rights in relation to article 1.1 of the same instrument, to the detriment of the relatives of Mr. Luis Hernando Morera Garzón, due to the lack of diligence in the investigation of the events that occurred.

FIFTH SECTION: SATISFACTION MEASURES

The Colombian States commits to undertake the following satisfaction measures:

i. Act of acknowledgment of responsibility:

The Colombian State will carry out a Private Act of Acknowledgment of Responsibility, which will be carried out virtually with the participation of the petitioners. The act will be carried out in accordance with the acknowledgment of responsibility indicated in this Agreement.

³ Attorney General of the Nation. Official Letter No. 20211700038291 of June 3, 2021.

⁴ In which case, the values to be recognized by virtue of the economic compensation within the framework of Law 288 of 1996, will be recognized to the deceased in accordance with the succession that is presented for this purpose.

⁵ According to the information provided by the petitioners, Mrs. Diana Patricia Morera Sánchez is the daughter of Mr. Luis Hernando Morera Garzón. However, as of the date of Mr. Morera Garzón's death, her birth had not been registered, for which reason her grandfather, Mr. Juan de Jesús Morera Castro, registered Diana Patricia Morera Sánchez as his daughter on February 1, 1999, which is evidenced in his Civil Registry of Birth.

⁶ This, in accordance with the jurisprudence of the Inter-American Court of Human Rights. See, I/A Court H.R., Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para 425.

This measure will be in charge of the National Legal Defense Agency of the State.

ii. Economic aid:

The Colombian State, through the Ministry of National Education and the Colombian Institute of Educational Credit and Technical Studies Abroad ICETEX, will grant economic aid to Diana Patricia Morera Sánchez, with the aim of financing an academic program at a professional technical, technological, university or postgraduate in a Higher Education Institution in Colombia recognized by the Ministry of National Education, in in-person, distance or virtual mode.

The economic aid will cover the value of the tuition for the semesters of an academic program at a technical, professional, technological, university or postgraduate level, for a semester value of up to eleven (11) SMMLV and a semester support stipend of up to two (2) SMMLV if the Higher Education Institution is located in the beneficiary's municipality of residence, or up to four (4) SMMLV if the Higher Education Institution is outside the beneficiary's municipality of residence.

Within the framework of university autonomy, the Ministry of National Education will refrain from managing or requesting from any Higher Education Institution, the admission or allocation of quotas in academic programs. The beneficiary must carry out the pertinent procedures to be admitted, ensuring her good academic standing in the Institution of Higher Education, ensuring an adequate academic performance.

The aid must begin to be used within a term not exceeding five (5) years from the signing of this agreement, or otherwise the efforts of the State to provide it will be considered fulfilled.⁷

iii. Working meetings with the Ministry of Housing, City and Territory:

The Colombian State, through the Ministry of Housing, City and Territory, will hold three (3) working meetings with the beneficiaries of the Friendly Settlement Agreement, if they so wish, with the aim of presenting the institutional offer established by the Colombian State to access to housing programs, including the requirements and the way to access this offer.

The implementation of this measure will not imply granting the beneficiaries of family or housing subsidies in kind or housing improvements, since the foregoing will depend on the willingness of the beneficiaries to access any of the programs included in the institutional offer presented to them, as well as compliance with the corresponding requirements within the deadlines established in each program.⁸

iv. Publication of the Article 49 Report:

The Colombian State will publish the pertinent sections of the friendly settlement report once it is approved by the Inter-American Commission, on the website of the National Legal Defense Agency of the State, for a term of six (6) months.

SIXTH SECTION: COMPENSATION

The State undertakes to initiate the processing of Law 288 of 1996 "By means of which instruments are established for the compensation of damages to the victims of human rights violations by virtue of the decisions of certain international Human Rights bodies", once this friendly settlement agreement is approved through the issuance of the Report foreseen in

⁷ Ministry of National Education. Official Letter No. 2021-EE-086166 dated May 6, 2021.

⁸ Ministry of Housing, City and Territory. Official Letter No. 2021EE0068822 dated June 24, 2021.

Article 49 of the American Convention on Human Rights, with the purpose of repairing the damages caused to the next of kin of the victims as a consequence of the effects generated by the events of the present case.

The National Legal Defense Agency of the State will be the body in charge of promoting the process of Law 288 of 1996.

For purposes of compensation, the criteria and amounts recognized by the current jurisprudence of the Council of State will be used.

SEVENTH SECTION: HOMOLOGATION AND SUPERVISION

The parties request the Inter-American Commission to approve this Agreement and to supervise its implementation.

Having read this agreement and being the parties aware of the scope and legal content thereof, it is signed on August twenty-five (25), 2021.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. The IACHR reiterates that according to Articles 48.1.f and 49 of the American Convention, this procedure is intended to reach “a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.” The consent to undertake this procedure expresses the good faith of the State to comply with the purposes and objectives of the Convention by virtue of the *pacta sunt servanda* principle, by which the States must comply in good faith with the obligations assumed in treaties.⁹ It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows the termination of individual cases in a non-contentious manner, and has shown, in cases involving several countries, to offer an important avenue for solution, which can be used by both parties.

13. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

14. Pursuant to the provisions of section seven of the friendly settlement agreement, the parties agreed to request the Commission to adopt the report contemplated in Article 49 of the American Convention, and to monitor its compliance, once the agreement was executed.

15. The Commission notes that, given the information provided by the parties up to this time and the request for approval of the friendly settlement agreement submitted by the parties to the IACHR, it is appropriate to assess compliance with the commitments established in the friendly settlement agreement.

16. The Inter-American Commission considers that the clauses one (Definitions), two (Background), three (Beneficiaries) and fourth (Acknowledgment of Responsibility) of the agreement are of a declaratory nature, for which it is not appropriate to supervise their implementation. In this regard, the Inter-American Commission values the fourth declarative clause, in which the Colombian State acknowledges its international responsibility for the violation of the rights enshrined in the articles in Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in relation to article 1.1 (obligation to respect) of the same instrument.

17. In relation to point 1 of the fifth clause related to the act of reparation, as reported jointly by the parties, the same was carried out on November 5, 2021, through a virtual platform in the context of the

⁹ Vienna Convention on the Law of Treaties, U.N. Doc. A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda**". *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

COVID-19 pandemic using different computer tools.¹⁰ The parties reported the existence of “permanent communication between the State and the petitioners, with whom each of the details for compliance with the measure was arranged, such as the date and time for the act, the order of the day and the logistics required for its performance”. In this regard, the parties provided a simple copy of the invitations distributed for said event, in which the victim's next of kin, close friends, and their representatives participated, as well as the State's National Legal Defense Agency and the IACHR.

18. Likewise, the parties gave an account of the content of the agenda of the act of acknowledgment of responsibility, which included an opening, the intervention of José Morera Garzón, brother of Mr. Luis Hernando Morera Garzón, a video with the song “Los Caminos de la Vida” and words of Dr. Luz Marina Barahona Barreto, representative of the victims. For its part, the intervention of the State was carried out by María del Pilar Gutiérrez Perilla, Coordinator of the Group for Friendly Settlements and Follow-up of Recommendations before the Inter-American System of the ANDJE, who apologized for the events that occurred and recognized the international responsibility of the State in the terms of the friendly settlement agreement, expressing the following:

[...]

Therefore, on behalf of the State of Colombia, I acknowledge international responsibility for the violation of the rights to judicial guarantees and judicial protection, recognized in the American Convention on Human Rights, in relation to the general obligation of respect and guarantee established in the same instrument, to the detriment of the relatives of Luis Hernando Morera Garzón.

Although we know that nothing can replace the loss of Luis Hernando, as well as the lack of investigation and effective punishment of those responsible, we trust that the path of reconciliation that we are beginning today will allow us to overcome these violent episodes that we as a Nation have had to face and will allow us to build a country in which no one else has to suffer because violence takes away a loved one.

We hope that this act, which is part of the satisfaction measures agreed to in the Friendly Settlement Agreement signed with the victims' representative on August 25, 2021, will help fill the void left by Mr. Morera's death, as well to vindicate his memory.

Today we praise the memory of Luis Hernando Morera Garzón, a working peasant in our country, who, like so many others, was a victim of violence, and who must be vindicated and remembered so that episodes like this are never repeated.

[...]

19. Finally, the Commissioner President and Rapporteur of the Inter-American Commission on Human Rights for Colombia, Antonia Urrejola, also participated in the act and highlighted the importance of the act of acknowledgement, since it is from the acceptance of the occurrence of the facts that the victim's wounds can begin to heal and spaces for reconciliation can be built. In the same way, she highlighted the agreed to measures and that she hopes that by complying with them, the significant and restorative effect of the agreement will be achieved. On behalf of the Commission, she reiterated her total willingness to follow up on the agreed measures until they are fully implemented. For the aforementioned, taking into account the foregoing and the information provided jointly by the parties, the Commission considers that point 1 of the fifth clause of the friendly settlement agreement related to the act of reparation has been fully complied with and it declares it as such.

¹⁰ See Youtube, Channel of Agencia Nacional de Defensa Jurídica del Estado colombiano (ANDJE). Acto de Reconocimiento de Responsabilidad en la Petición No. 514-11, Luis Hernando Morera Garzón. Broadcast live on November 5, 2021. Electronically available at: [Acto de Reconocimiento de Responsabilidad en la Petición No. 514-11, Luis Hernando Morera Garzón - YouTube](#)

20. Regarding point 2 of clause five, on the economic aid for Diana Patricia Morera Sánchez, the parties reported that on October 13, 2021, a meeting was held between the beneficiary of the measure, her representative, the Ministry of National Education and the National Agency for Legal Defense of the State in order to publicize the characteristics of the measure, the professional orientation programs that the Ministry of National Education has and, in turn, to know the studies that Diana Patricia wishes to carry out. The beneficiary informed her willingness to study veterinary medicine and zootechnical medicine at the San Martín University in the city of Cali and reported that she is pregnant, so she will begin her studies in the second semester of 2022. The ANDJE will carry out the respective procedures once the beneficiary communicates her willingness to start the compliance with the measure according to the program she chooses. Based on the foregoing, the Commission considers that this measure is pending compliance and is awaiting updated information from the parties on its execution.

21. Regarding point 3 of clause five, on the holding of work meetings with the Ministry of Housing, City and Territory, the parties reported that said meetings were held on November 8, 9 and 12 with the participation of the beneficiaries of the measure, who are being given advice for access to programs according to their particular interest. Based on this, taking into consideration the information provided by the parties, the Commission considers that this part of the agreement has been fully complied with and so it declares it as such.

22. Regarding the provisions of point 4 of section five (publication of the friendly settlement report) and section six (compensation), said measures are pending compliance and must be executed after this approval and therefore the Commission will not rule on compliance with these reparation measures in this instance.

23. For the rest, the Commission considers that the remainder of the content of the agreement is of a declaratory nature, and it would therefore not be appropriate to supervise the execution of its compliance.

24. For these reasons, the Commission concludes that points 1 and 3 of clause five (act of acknowledgment of responsibility and working meetings, respectively) have been fully complied with and so it declares it so. On the other hand, the Commission finds that points 2 and 4 of clause five (economic aid and publication of the agreement, respectively) and clause six (compensation) are pending compliance and so it declares it. Finally, the Commission considers that the rest of the content of the agreement is of a declaratory nature, so its supervision is not appropriate.

V. CONCLUSIONS

1. Based on the foregoing considerations and by virtue of the procedure established in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction with the achievement of a friendly settlement in this case, based on respect for human rights, and compatible with the object and purpose of the American Convention.

2. In light of the considerations and conclusions included in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on August 25, 2021.
2. To declare full compliance with points 1 and 3 of clause five (act of acknowledgment of responsibility and working meetings, respectively), according to the analysis contained in this report.
3. To declare pending compliance points 2 and 4 of the clause five (economic aid and publication of the agreement, respectively) and clause six (financial compensation), according to the analysis contained in this report.

4. To continue with the supervision of points 2 and 4 of clause five (economic aid and publication of the agreement, respectively) and clause six (financial compensation), according to the analysis contained in this report. To this end, to remind the parties of their commitment to periodically report to the IACHR on their compliance.

5. To publish this report and to include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on March 11, 2022. (Signed): Julissa Mantilla Falcón, President; Edgar Stuardo Ralón Orellana, First Vice-President; Margarete May Macaulay, Second Vice-President; Esmeralda E. Arosemena de Troitiño; Joel Hernández García and Roberta Clarke Members of the Commission.